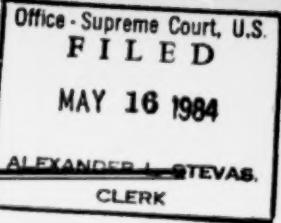


No. 83-1490



In the
Supreme Court of the United States

CITY OF ALTOONA, PENNSYLVANIA,

Petitioner,

vs.

EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION,

Respondent.

SUPPLEMENTAL PETITION OF THE CITY OF ALTOONA,
PENNSYLVANIA FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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**SUPPLEMENTAL PETITION OF THE CITY OF
ALTOONA, PENNSYLVANIA FOR WRIT OF
CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE THIRD CIRCUIT**

With this Supplemental Petition for Certiorari Petitioner seeks to apprise the Supreme Court of the recent decision of the Fourth Circuit Court of Appeals in *Johnson v. Mayor and City Council of Baltimore*, ____ F.2d ____ (No. 81-1965, April 4, 1984).

The issue in *Johnson* was whether the city pension program could permissibly require firefighters, in face of the Age Discrimination Act of 1967, 29 U.S.C. §623(a), to retire before age 70. The Fourth Circuit found in 5 U.S.C. §8335(b)(providing generally for mandatory retirement of Federal firefighters and law enforcement officers at age 55) the "reasonable Federal standard" required by *Equal Employment Opportunity Commission v. Wyoming*, ____ U.S. ____, ____, 103 S.Ct. 1054, 1058 (1983) as would justify mandatory retirement before age 70. The Fourth Circuit Court of Appeals held *as a matter of law* that retirement of city firefighters at age 55 was based upon a bona fide occupational qualification.

The issue of age as a bona fide occupational qualification was expressly preserved by Petitioner City of Altoona in the District Court proceedings, and was unnecessary for the District Court to consider in ruling upon the Parties' respective Motions for Summary Judgment.¹ The Third Circuit Court of Appeals in this proceeding nevertheless

¹Brief of Defendant City of Altoona in Support of Its Motion for Summary Judgment 5: "(The City also contends in defense of these claims that insofar as age may be determined to have been a factor in its employment decision, age was a bona fide occupational qualification. Because the issues briefed are considered to be dispositive of claims asserted against the City, and because of the differing proofs required in the bona fide occupational qualification defense, this issue has not been treated in this brief, and will, if necessary, be deferred until a later stage in these proceedings.)"

remanded the matter to the United States District Court for the Western District of Pennsylvania with an instruction to enter judgment in favor of Respondent Equal Employment Opportunity Commission and against Petitioner City of Altoona; therefore, the City of Altoona may be precluded from raising the bona fide occupational qualification defense as decided by the Fourth Circuit in *Johnson*.

The decisions of the Third and Fourth Circuit Courts of Appeal are in diametrical conflict. Moreover, the cities of Altoona, Pennsylvania and Baltimore, Maryland, along with their firefighter employees, are subject to disparate employment standards.

CONCLUSION

The recent conflicting decision of the Fourth Circuit Court of Appeals emphatically illustrates the need for the Supreme Court's resolution of the intensified conflict among the Circuits through granting of the Petition for Certiorari.

Respectfully submitted,

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